

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD SARVEY,

Petitioner,

No. CIV S-99-0936 DFL DAD P

vs.

A. C. NEWLAND, Warden,

Respondent.

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 17, 2005, judgment was entered in this court denying the petition. Judgment was served on the parties on that same date. On March 2, 2005, petitioner filed a notice of change of address. On March 3, 2005, the judgment was re-served on petitioner at his new address. On April 18, 2005, petitioner filed a notice of appeal. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Federal Rule of Appellate Procedure 22(b) requires the district court judge who rendered a judgment denying such petition to “either issue a certificate of probable cause or state the reasons why such a certificate should not issue.”

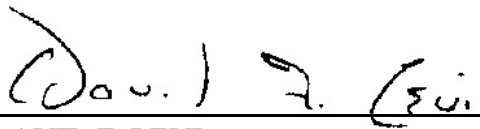
The timely filing of a notice of appeal is a jurisdictional requirement. Scott v. Younger, 739 F.2d 1464, 1466 (9th Cir. 1984). Here, the time limit for filing a notice of appeal

1 following entry of judgment is thirty days. See Fed. R. App. P. 4(a). Petitioner's notice of appeal
2 in this action was filed more than thirty days after entry of judgment and more than thirty days
3 after re-service of judgment on March 3, 2005.

4 The United States Court of Appeals for the Ninth Circuit has held that the
5 issuance of a certificate of probable cause cannot vest the court of appeals with jurisdiction if
6 jurisdiction is not proper in that court. Hayward v. Britt, 572 F.2d 1324, 1325 (9th Cir. 1978).
7 The rationale of Hayward applies with equal force to a certificate of appealability. For these
8 reasons, the court declines to issue a certificate of appealability.

9 IT IS SO ORDERED.

10 DATED: 6/27/2005

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14 DAVID F. LEVI
15 United States District Judge
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